

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE:

Syed A. Ishaq

Debtor(s)

Case No.: 15-25700

Chapter: 13

Judge Janet S. Baer

RESPONSE TO MOTION TO DETERMINE VALUE OF CLAIM

NOW COMES JPMORGAN CHASE BANK, N.A. SUCCESSOR BY MERGER TO BANK ONE, and/or its assigns (hereinafter “Chase”) by and through its attorneys, Codilis & Associates, P.C., and for its Response to the Debtor’s Motion to Value states as follows:

According to Debtor’s Motion the value the property commonly known as 5151 Weber Lane, Skokie, Illinois 60077 is \$210,000.00, the property is encumbered by a first mortgage in the amount of \$82,305.84, and therefore Chase’s claim secured by a second mortgage (with a balance of \$219,086.32) should be valued and crammed down to \$127,694.16 which is the difference between the alleged value of the property (\$210,000.00) and the balance owed on the first mortgage (\$82,305.84). Paragraph #9 of the Motion to value erroneously alleges that the property is not the Debtor’s primary residence. Per the Voluntary Petition, the property is the Debtor’s primary residence. For the reasons that follow, Debtor’s Motion should be denied.

Chase’s second mortgage is a mortgage secured only by real property that is the Debtor’s primary residence. Even using the Debtor’s alleged value of \$210,000.00, Chase’s second mortgage is supported by \$127,694.16 of equity in the property over and above the balance owed on the first mortgage. A mortgage secured only by a lien against a debtor’s principal residence

may not be crammed down when the mortgage is supported by at least some equity. *In re: Nobleman*, 508 U.S. 324, 113 S. Ct. 2106, 124 L. Ed. 2d (1993).

Even if Chase's second mortgage could be crammed down, Chase disputes the Debtor's alleged value of \$210,000.00 based on the attached appraisal indicating that the property has a value of \$325,000.00. (**See attached Exhibit**). Based on the attached appraisal, the property has a value in excess of the \$82,305.84 balance owed on the first mortgage plus the \$219,086.32 balance owed on Chase's second mortgage. Therefore, if anything, Chase's secured claim should be valued at the full balance owed and may not be crammed down.

There are other problems. Based on a review of the mortgage attached to Chase's proof of claim filed on 11/13/15 as Claim #4-1, title to the property is vested in Cosmopolitan National Bank of Chicago, as Trustee under a Trust Agreement and Known as Trust #27504. Chase is not in possession of a copy of the Trust, but presumably the beneficiaries of the Trust are the Debtor and his non-filing spouse Nabeela Amjad who also signed the note. (See copy of note attached to Proof of Claim #4-1). Neither the Trustee or the Debtor's non-filing spouse are debtors in this case, so neither will be receiving a discharge. Chase is unaware of this Court's position, but according to at least some bankruptcy courts a discharge must be entered before a mortgage that has been crammed down must be released. Furthermore, because the property is owned by the Trustee and not by the Debtor, the property itself is not in the bankruptcy estate, so this Court lacks jurisdiction over Chase's mortgage lien against the property. The only thing in the Debtor's bankruptcy estate is the Debtor's beneficial interest in the trust. But even if the Debtor's beneficial interest in the trust somehow allows him to cram down Chase's mortgage against his interest in the property, it would not allow him to cram down Chase's mortgage against his non-filing spouse's interest in the property because she is not a debtor in this case.

WHEREFORE, JPMORGAN CHASE BANK, N.A. SUCCESSOR BY MERGER TO BANK ONE prays this Court deny Debtor's Motion to Value Claim and for such other and further relief as this Court may deem just and proper.

Dated this February 11, 2015.

Respectfully Submitted,
Codilis & Associates, P.C.

By: /s/ Peter C. Bastianen

Berton J. Maley ARDC#6209399
Rachael A. Stokas ARDC#6276349
Gloria C. Tsotsos ARDC#6274279
Jose G. Moreno ARDC#6229900
Peter C. Bastianen ARDC#6244346
Joel P. Fonferko ARDC#6276490
Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
C&A FILE (14-11-17283)

NOTE: This law firm is a debt collector.